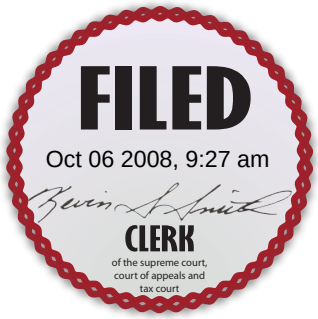

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IN THE
COURT OF APPEALS OF INDIANA

ROBERT W. JACKSON, a minor by next friends, ROBERT D. JACKSON, JR., and MARGIE JACKSON; and DANIEL JACKSON, a minor by next friends, ROBERT D. JACKSON, JR., and MARGIE JACKSON,	)	
Appellants-Defendants,	)	
vs.	)	No. 45A03-0804-CV-163
INTERSTATE FIRE AND CASUALTY COMPANY,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Jeffery J. Dywan, Judge
Cause No. 45D11-0710-PL-148

October 6, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Parents Robert D. and Margie Jackson, on behalf of their minor children Robert W. and Daniel Jackson, appeal the trial court's grant of summary judgment to Interstate Fire and Casualty Company. The trial court found that Interstate had no duty to defend or indemnify its insured, Illinois Bulk Carriers, Inc. ("IBC"), against claims arising out of an automobile accident between the Jackson children and an employee of Wireman Trucking, who was hauling sludge for IBC. Because the insurance policy at issue excludes automobile liability coverage whether the automobiles are owned by the insured or its subcontractors, we affirm the trial court's grant of summary judgment.

Facts and Procedural History

On October 26, 2005, Allan Irvine, driving eastbound on State Road 231 in Crown Point, Indiana, struck the rear of Kirk Shule's vehicle, crossed the center line and entered opposing traffic, and struck Tina Postma's vehicle. Minors Robert W. and Daniel Jackson were rear-seat passengers in Postma's car, and they were injured in the accident. At the time of the accident, Irvine, an employee of Wireman Trucking & Excavating, Inc. ("Wireman Trucking"), was driving a dump truck owned by Wireman Trucking. That day the Wireman truck was hauling sludge for IBC, which in turn had been hired by Allied Waste Industries of Northwest Indiana, Inc., which in turn had been hired by Mittal Steel USA, Inc., to haul the sludge from Mittal's location in East Chicago to a landfill in Newton County.

At the time of the accident, IBC was a named insured on two insurance policies. Interstate Fire and Casualty Company ("Interstate") had issued a commercial general

liability policy ("CGL") to IBC with IBC as the sole named insured on the policy. Progressive had issued a motor vehicles policy to Wireman Trucking, and IBC was listed as an additional insured on the policy.

The Interstate CGL policy with IBC provides in part:

> **2. Exclusions**
> This insurance does not apply to:
>
> * * * * *
>
> g. Aircraft, Auto or Watercraft
> "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading."

Appellant's App. p. 91, 93.

Robert D. and Margie Jackson, parents of Robert W. and Daniel, filed a complaint against Irvine, Wireman Trucking, the owner of Wireman Trucking, and IBC. The Jacksons then filed an amended complaint to add Mittal and Allied Waste as defendants and adding more counts against IBC. Postma and her two daughters also filed suit against the same defendants, as did Shule. In their complaints, the Jacksons alleged that IBC was negligent for failing to ensure that the vehicles used in their business had proper permits, sufficient insurance, and competent drivers. The Jacksons also alleged that Irvine was a borrowed servant from Wireman to IBC, making IBC vicariously liable for Irvine's negligence. At his deposition, the owner of Wireman Trucking testified that by oral agreement with IBC his company's truck was "running for" IBC in an arrangement like a "trip lease" but that he would not classify the arrangement as a loan of truck or driver to IBC. *Id.* at 59-60.

Interstate filed a complaint for declaratory judgment, arguing that it did not have a duty to defend or indemnify IBC, its insured, because of exclusion g. Interstate then filed a motion for summary judgment. The trial court granted summary judgment in favor of Interstate, finding that Interstate did not have a duty to defend or indemnify IBC against the Jackson, Postma, or Shule claims. The Jacksons now appeal.

Discussion and Decision

Our standard of review when considering a ruling on a motion for summary judgment is well settled, and it is the same standard used by the trial court. *Union Sec. Life Ins. Co. v. Acton*, 703 N.E.2d 662, 664 (Ind. Ct. App. 1998), *trans. denied*. We construe the designated evidence in the light most favorable to the nonmoving party and determine whether the record reveals a genuine issue of material fact and whether the trial court correctly applied the law. *Id.* As is true with other contracts, the interpretation of an insurance policy is a question of law, which we review *de novo*. *Dunn v. Meridian Mut. Ins. Co.*, 836 N.E.2d 249, 251 (Ind. 2005).

This case requires us to interpret the policy. Insurance contracts are subject to the same rules of construction as other contracts: we interpret an insurance policy with the goal of ascertaining and enforcing the parties' intent as revealed by the insurance contract. *HemoCleanse, Inc. v. Philadelphia Indem. Ins. Co.*, 831 N.E.2d 259, 262 (Ind. Ct. App. 2005), *reh'g denied, trans. denied*. In accomplishing this goal, we must construe the insurance policy as a whole. *Id.* If the contract language is clear and unambiguous, then it should be given its plain and ordinary meaning. *Id.* An insurance contract will be deemed ambiguous only if reasonable people would honestly differ as to

the meaning of its terms. It will not be regarded as ambiguous simply because the parties have asserted contrary interpretations of the contract language. *Property-Owners Ins. Co. v. Ted's Tavern, Inc.*, 853 N.E.2d 973, 978 (Ind. Ct. App. 2006).

Interstate's policy with IBC provides in pertinent part:

Commercial Lines Policy
Common Declarations

* * * * *

In return for the payment of the premium, and subject to all the terms of this policy, we agree with you to provide the insurance as stated in this policy. This policy consists of the following coverage parts for which a premium is indicated . . . .

Commercial Auto Coverage Part	$ Not Covered
Commercial Garage Coverage Part	$ Not Covered

* * * * *

Commercial General Liability Coverage Part
Supplemental Declarations

* * * * *

Hired Auto Liability Limit	$ Excluded
Non-owned Auto Liability Limit	$ Excluded

* * * * *

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

* * * * *

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

> **1. Insuring Agreement**
> a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result.
>
> * * * * *
>
> **2. Exclusions**
> This insurance does not apply to:
>
> * * * * *
>
> g. Aircraft, Auto or Watercraft
> "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading."

Appellant's App. p. 72, 83, 91, 93.

The Jacksons contend that exclusion g does not apply because "the dump truck was not owned, maintained, used, or entrusted to IBC. In addition, the dump truck that caused the accident was not operated by, rented, or loaned to IBC." Appellant's Br. p. 6. The Jacksons urge us to adopt a strict reading of exclusion g and conclude that exclusion g can *only* apply if the automobile involved in the accident is owned by, operated by, rented to, or loaned to IBC. They seem to argue that if the automobile is not owned by, operated by, rented to, or loaned to IBC, but is nevertheless used for IBC business by a subcontractor, the terms of exclusion g do not apply and IBC remains vicariously liable. The Jacksons argue that summary judgment is not appropriate because there remains a

genuine issue of material fact as to whether the dump truck was rented or loaned to IBC or whether Wireman Trucking was acting as IBC's subcontractor. We disagree.

This CGL policy unambiguously excludes automobile risks from its coverage. *See Strickland v. Auto-Owners Ins. Co.*, 615 S.E.2d 808, 810 (Ga. Ct. App. 2005) (describing the trucking industry's standard practice for carriers to obtain separate CGL policies and motor vehicle liability policies). The first page of the Interstate policy states that risks from commercial autos are excluded from coverage. Appellant's App. p. 72. Interstate's policy continues on to exclude coverage of the risks from hired or non-owned automobiles. *Id.* at 83. Exclusion g excludes coverage from risks associated with vehicles that IBC's employees own, rent, borrow, or operate. *Id.* at 93. Exclusion g would apply whether the complaint alleged liability for negligent driving by an insured's employee or vicarious liability for negligently hiring an incompetent driver as an employee. *See Wright v. Am. States Ins. Co.*, 765 N.E.2d 690, 697 (Ind. Ct. App. 2002). By its terms, this CGL policy is plainly intended to remove coverage for all risks associated with the operation of automobiles, which is standard for CGL policies. *See Monroe Guar. Ins. Co. v. Langreck*, 816 N.E.2d 485, 495 (Ind. Ct. App. 2004) (discussing the additional "non-owned" and "hired" automobile endorsements attached to the policy at issue and noting, "[t]hus, it is too broad a statement to say *all* CGL policies necessarily exclude any automobile liability coverage; standard CGL policies may do so but the standard may be specifically altered to provide such coverage . . . .").

Indiana courts have not addressed whether a CGL policy covers the risks associated with an insured's contractor's automobiles. But the Jacksons provide no basis

in this policy, nor can we discover one, to conclude that while the policy excludes coverage of motor vehicle liabilities from IBC and its employees, either Interstate or IBC intended the policy to cover risks from IBC's contractors. Interstate knows much less about IBC's contractors than it knows about its own named insured, IBC. *See Reyes-Lopez v. Misener Marine Const. Co.*, 854 F.2d 529, 531 (1st Cir. 1988) (holding that the automobile exclusion for the CGL policy at issue was not intended to cover risks from aircraft operated by the insured's contractors). Most importantly, this policy plainly excludes from coverage risks associated with hired and non-owned automobiles, and IBC does not own the Wireman truck. Thus, contrary to the Jacksons' assertions, neither we nor the trial court need decide whether Wireman Trucking was IBC's subcontractor under the terms of their oral agreement.

Because the plain language of Interstate's policy with IBC excludes from coverage the risks associated with automobile operation, there is no basis to conclude that Interstate has a duty to defend or indemnify against the suits arising out of Wireman Trucking's employee's automobile accident. We therefore affirm the trial court.

Affirmed.

KIRSCH, J., and CRONE, J., concur.